

CLIENT ALERT: ISSUANCE OF THE EVIDENCE LAW

The long-awaited Evidence Law (the “**Evidence Law**”) has been issued on 26/05/1443H (corresponding to 30 December 2021) and will form a key pillar of the legislative framework for the practice of law in the Kingdom. The Evidence Law is one of the four laws announced by His Royal Highness Crown Prince Mohammed bin Salman Al Saud with the aim of developing the legislative and justice ecosystem in the Kingdom.

Scope of the Evidence Law

The provisions of the Evidence Law apply to all civil and commercial transactions, and to criminal cases (in the absence of a regulating provision in the Law of Criminal Procedure)¹ as long as such provision does not conflict with the nature of the criminal case. The Evidence Law also applies to administrative cases (in the absence of regulating provisions in the Law of Civil Procedure before the Board of Grievances)² as long as such provision does not conflict with the nature of the administrative case.

Once it comes into force, the Evidence Law will supersede the chapters regulating evidence under the Law of Civil Procedure and Law of Commercial Courts,³ such that all provisions and procedures of evidence are unified under one law.

However, where there is a gap in the Evidence Law, the legislators have stated that the provisions of the Law of Civil Procedure and the Law of the Commercial Court, as the case may be, shall apply. If any such gaps in the Evidence Law are not addressed by the Law of Civil Procedure and Law of Commercial Courts, then ultimately *Sharia* principles will apply.

Evidence regulated by the Evidence Law

The means of evidence regulated by the Evidence Law include acknowledgment of the types of evidence: judicial and non-judicial evidence, as well as written evidence (whether in official or ordinary documents), digital evidence, testimony, custom and habit, oath, inspection

Key Issues:

- Evidence Law will come into force on 09/12/1443H (corresponding to 08/07/2022).
- Governs all commercial and civil transactions, and partially governs administrative and criminal cases.
- Allows a flexible choice for the parties to agree on specific means and procedures for evidence.
- Limits the judge’s discretion in matters of evidence.
- Procedural regulations for electronic evidence, special rules for governing expert related matters, procedural manuals and required ministerial resolutions will be issued by the Minister of Justice in coordination with the Supreme Judicial Council.
- Evidence Law does not apply retroactively to validate procedures

¹ Issued pursuant to Royal Decree No M/2 Dated 22/1/1435H

² Issued pursuant to Royal Decree No M/3 Dated 22/1/1435H

³ Issued pursuant to Royal Decree No M/93 Dated 15/8/1441H

and experience, and any evidence stipulated in *Sharia* or any other applicable law. The Evidence Law provides a definition, conditions and procedures for, as well as exceptions to, these means.

Features and most prominent provisions

Limitation on Court's discretion in matters of evidence

The Evidence Law has codified the provisions governing evidence before the Courts and provided examples of admissible evidence with the aim of achieving the required level of certainty and predictability of judicial rulings in matters relating to evidence.

Witness examination

An important feature of the Evidence Law is the introduction of the concept of direct witness examination, which was not the practice in the Kingdom before the issuance of the Evidence Law. Previously, litigants would direct their questions to the judge who in turn would have discretion to direct such questions to the witness. Pursuant to the Evidence Law, litigants are also being granted the right to object to the questions directed to the witnesses.

Efficiency and inclusiveness

The Evidence Law provides that there is no specific form for proving any obligation between parties, which allows greater room and means for parties to prove their rights before the competent court. It is also essential to note that the Evidence Law has introduced the 'discovery concept' which allows a party to request the disclosure of any relevant document in the possession of the other party. The Evidence Law also grants the court the authority, on its own volition, to call a witness i.e., without the request of any of the litigants. In addition, the courts have been granted the authority to take into consideration the evidentiary procedures that are followed in a foreign jurisdiction.

Developing digital evidence and procedures

The Evidence Law permits submission of digital evidence. Pursuant to the Evidence Law, digital evidence now holds the same status as written evidence. Digital evidence includes digital communications (including emails, digital signatures and digital media) or any other form of digital evidence. The admissibility of digital evidence in court means that the court can use other digital tools in its evidentiary procedures. In the event that the person concerned with the evidentiary procedure resides outside the jurisdiction of the court, the court will now be able to question the litigant, hear the testimony of the witness and direct oaths electronically.

Writing and testimony

The Evidence Law establishes rules of evidence that assure the authenticity of writing and its strength in evidence, in exchange for legalizing the implementation of the oath in specific cases, taking into account the stability of judicial position, and assuring the interests associated with documenting transactions in writing. This includes the inadmissibility of proving the existence or expiry of the action valued one hundred thousand Riyals or more unless agreed otherwise. It is permissible for the parties to agree in writing not to recognise oral testimony as a means of evidence, and to regulate matters of invocation of commercial books and private papers for merchants and non-merchants. The Evidence Law also codifies provisions protecting witnesses, including a prohibition on harming or trying to intimidate or influence witnesses, and granting witnesses the right to be compensated for transportation expenses and for interrupting their work.

Wider area for the parties' will

The Evidence Law gives wide flexibility to the parties to agree on specific rules of evidence as opposed to being subject to the general rules of evidence, thereby enabling the parties to agree on the means that the court can accept to establish their obligations and facts. This includes the flexibility for the parties to agree to accept the result of an expert's determination in advance of any litigation and to exclude some documents from the submissions to the court upon the request of a litigant to maintain confidentiality.

The Evidence Law was published in the official gazette in the Kingdom of Saudi Arabia (Umm Al-Qura) on 04/06/1443H (corresponding to 07 January 2022) and will come into effect and be enforceable (180) days after the date of its publication.

CONTACTS



Dr. Fahad Abuhimed
Managing Partner

T +966 11481 9750
E fahad.abuhimed
@ashlawksa.com



Yasser AlHussain
Partner, Head of Banking
and Finance

T +966 11481 9770
E yasser.alhussain
@ashlawksa.com



Dr. Abdullah AlAjlan
Counsel, Head of
Disputes Resolution

T +966 11481 9715
E abdullah.alajlan
@ashlawksa.com



Abdullah AlSugair
Associate

T +966 11481 9768
E abdullah.alsugair
@ashlawksa.com



AlJawharah AlSadoun
Associate

T +966 11481 9700
E aljawharah.alsadoun
@ashlawksa.com

Abuhimed Alsheikh Alhagbani Law Firm,
Building 15 The Business Gate, Riyadh,
Kingdom of Saudi Arabia

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